

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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SUSAN MEAD,

Plaintiff,

v.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

Case No. 5:13-cv-71

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 4, 5, & 8)

This matter came before the court for a review of the Magistrate Judge's January 8, 2014 Report and Recommendation ("R & R"). Plaintiff has filed a motion to reverse the decision of the commissioner. (Doc. 4.) Defendant opposes the motion and has filed a motion for order affirming the decision of the commissioner. (Doc. 5.) Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See*

Campbell v. United States Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his seventeen page R & R, the Magistrate Judge carefully reviewed the factual record and the motions before the court and determined that among other things, the Administrative Law Judge (“ALJ”) did not follow the treating physician rule and did not make a proper determination of Plaintiff’s residual functional capacity. He recommends that the case be remanded for a new decision using the proper legal standards. The Magistrate Judge further recommended that “on remand, after conducting a new analysis of the medical opinions, . . . the ALJ should reassess [Ms.] Mead’s credibility.” (Doc. 8 at 15.) The Magistrate Judge denied Plaintiff’s request for a remand solely for the calculation of benefits because a determination that Plaintiff was disabled during the relevant time period is not inevitable if the correct legal standards are applied. Neither party has objected to the Magistrate Judge’s recommendations which the court finds well-reasoned.

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge’s R & R as the court’s Order and Opinion, and GRANTS IN PART Plaintiff’s motion to reverse decision of the commissioner, DENIES the Defendant’s motion for order affirming the decision of the commissioner, and REMANDS this matter for further proceedings and a new decision.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 21st day of March, 2014.

/s/ Christina Reiss

Christina Reiss, Chief Judge
United States District Court